

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
MARITEL, INC. and	)	WT Docket No. 04-257
	)	
MOBEX NETWORK SERVICES, LLC.	)	RM-10743
Petitions for Rule Making to Amend the	)	
Commission’s Rules to Provide Additional	)	<i>Report and Order</i> , 22 FCC Rcd 8971
Flexibility for AMTS and VHF Public Coast	)	(Commission 2007) (the “R&O”)
Station Licensees	)	

To: Office of the Secretary.  
Attention: The Commission

Reply to Opposition to “2011 Petition”:  
“Application for Review” or in the Alternative Section 1.41 Request<sup>1</sup>

Petitioners hereby reply to the MCLM opposition (the “Opposition”) to their “2011 Petition” (the “Petition” or “2011 Petition” herein).

Form

Contrary to the Opposition, the 2011 Petition was properly addressed to the Commission under §1.115(g) since (i) it is a “request for reconsideration” of a decision that was in substance and effect a “ruling which denies an application for review,” and (ii) it meets the criteria in §1.115(g) (1) and (2), and (iii) for reasons in the 2011 Petition. It also is proper for a decision under §1.41 in the alternative.

Licensee and Licenses Disqualification

Contrary to MCLM, the Petition was entirely correct to argue that MCLM and its licenses are disqualified because without valid licenses a party is not entitled to any relief based on the licenses, and the subject here is certain flexibility afforded by the *R&O* (2007). Indeed, the FCC *Order to Show Cause*, **FCC 11-64**, released April 19, 2011 against MCLM (the “OSC”),

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<sup>1</sup> The defined terms used herein have the same meaning they had in the 2011 Petition.

demonstrates this disqualification. The OSC made clear that MCLM should not be entitled to keep its site-based licenses (or its geographic licenses) and assign them for benefits. Similarly, the Petition argues that MCLM should not be entitled to any relief benefits under its licenses, including its site-based licenses.

Contrary to the Opposition, Petitioners are not simply alleging that they assert there are licensee and licenses disqualifications, but that there is evidence before the FCC demonstrating the disqualifications (that MCLM failed to disprove) and the evidence, *inter alia*, show automatic disqualification/ termination including failure to meet the requirements of §§ 1.955 and 80.49, and §80.475(a)(1990) for reasons the Petition properly explained, including by reference and incorporation. As the Commission noted in the OSC, automatic termination takes place when the licensee fails to meet requirements of those rules regarding timely construction-coverage or permanent continuance. Similarly, failure to state actual control results in an improper license from the start that is automatic disqualification.<sup>2</sup> As the facts show that failure to state actual control applies to both AMTS incumbents.

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<sup>2</sup> In the Opposition MCLM criticized Petitioners for not yet building licenses, Petitioners summarily note: MCLM filed the Opposition on the day that the OSC was released. The OSC describes, with evidence, that MCLM is an incorrigible violator of FCC law (and the U.S. Criminal Code), and constantly hides its real actions and control, unfairly competes with and damages Petitioners, and does not have validly constructed and operated stations. Petitioners, on the other hand, have been fully public concerning their extensive due diligence in obtaining in the last decade successive amounts nationwide of FCC licenses, including 200 and 900 MHz and more recently low VHF range, and working with known experts in the field to develop unique and needed nationwide wireless for smart transport, energy, environment and emergency applications. That development (technical, business, successive auction planning and costs, legal, etc.; contributions of spectrum to nonprofit organization purposes, etc.) costs more in resources than the licenses per se, demonstrates due diligence in the public interest, and is consistent with Congressional purposes (for advanced wireless technology and systems, and intelligent transportation, smart grid, emergency wireless, environmental protection, etc.) than simply “constructing” a token or rudimentary system to maintain spectrum. Also, Petitioners have not failed to meet any construction requirement. In addition, the LLC Petitioners have assigned substantial amounts of their licensed spectrum to Skybridge Spectrum Foundation, a nonprofit corporation assisting public agencies to meet the above-noted smart wireless goals. See, e.g., [www.scribd.com/warren\\_havens/shelf](http://www.scribd.com/warren_havens/shelf) .

### Lack of Declaration/ Affidavit

The Opposition did not contain a declaration/ affidavit that is required for any pleading in which an opposing party denies facts submitted in a challenged petition under declaration. The 2001 Petition contained a proper declaration. For this reason alone, the Opposition is defective since no party authorized by MCLM has stepped forward to deny facts under penalty of perjury. That is the nature of MCLM: it never specifically asserts any qualifying facts: as to actual construction, the required details of operation,<sup>3</sup> actual ownership, actual report of constructed stations, and other threshold and qualifying factual disclosures. The Commission should summarily reject this practice of evading factual disclosures in licensing matters and of its officers evading personal responsibility, including in denials of factual showings by Petitioners by not submitting declarations under penalty of perjury. MCLM and PSI cooperate in these and other evasive and misleading practices, and the record shows.

### Defective Service

The Opposition had an improper certificate of service. Petitioners served a long list of parties since they were asserting facts and making challenges to the MCLM and PSI AMTS incumbent licenses. The Opposition denies those facts and argues that the MCLM licenses are valid. Those are issues in various application proceedings involving the parties that Petitioners served. The Opposition had to but failed to serve all those parties.

### Character and Fitness, and Relief not Possible

Regarding the Opposition's assertion of imposing conditions on incumbents, incumbents are not entitled to relief (e.g. the *R&O* (2007) grant of certain flexibility) unless they meet the threshold conditions to keep and use their site-based licenses in the first place. The incumbents

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<sup>3</sup> Petitioners have shown in numerous challenge proceedings before the FCC against MCLM that it has failed to comply with the simple factual disclosure requirements to operate and obtain radio frequency protection under §80.385(b)(1), in accordance with the FCC's two Orders, DA 10-664 and DA 09-793.

cannot get relief for something--here, site-based AMTS licenses-- that they do not have, nor are they entitled to argue for relief (rule flexibility) for the licenses.

Conclusion, and Potential Mootness

For the reasons given, the 2011 Petition and the relief it requests should be granted.

However, if the MCLM and other (PSI) site-based AMTS station licenses are recognized as automatically terminated, which Petitioners believe will take place once the FCC staff has sufficient opportunity, in relation to the OSC and other pending matters before the FCC, to tend to a careful review, then this 2001 Petition will be moot.

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Respectfully,

**Environmental LLC (formerly known as AMTS Consortium LLC), by**  
*[Filed electronically. Signature on file.]*

Warren Havens, President

**Verde Systems LLC (formerly known as Telesaurus VPC LLC), by**  
*[Filed electronically. Signature on file.]*

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**Intelligent Transportation & Monitoring Wireless LLC, by**  
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**Telesaurus Holdings GB LLC, by**  
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**V2G LLC, by**  
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Warren Havens, President

**Skybridge Spectrum Foundation, by**  
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Warren Havens, President

**Warren Havens, an Individual**  
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Warren Havens

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Date: May 4, 2011

Declaration

I, Warren Havens, as President of Petitioners, hereby declare under penalty of perjury that the foregoing Reply was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

*/s/ Warren Havens*  
*[Submitted Electronically. Signature on File.]*

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Warren Havens

May 4, 2011

## Certificate of Service

I, Warren C. Havens, certify that I have, on May 4, 2011, caused to be served, by placing into the USPS mail system with first-class postage affixed (with delivery tracking) unless otherwise noted below, a copy of the Reply to the following:<sup>4</sup>

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By ULS filing:

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*Via ULS*

### **2. Mobex-MCLM & Related (Served Parties)**

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*Note: the following will be served if, upon final review, Petitioners find under FCC rules and practices, they are parties and should be served. (MCLM-Mobex earlier complained that entities not directly parties to and license application should not be served, for example. Also, the April 1, 2011 email from FCC staff to W. Havens (signer above) and Dennis Brown for MCLM-Mobex took the position that a presentation in a restricted proceeding need only be filed directly on ULS in that*

*matter to the parties directly involved. Petitioners have a pending request to the FCC Office of General Counsel, David Senzel (copied to Dennis Brown) to clarify that apparent policy.*

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<sup>4</sup> The mailed copy being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.

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